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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

THANH VAN TRAN,

Defendant and Appellant.

G042195

(Super. Ct. No. 07WF2026)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Thomas M. Goethals, Judge. Affirmed.

Anita P. Jog, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* * *

Thanh Van Tran entered a guilty plea to one count of first degree burglary (Pen. Code, §§ 459, 460, subd. (a))¹ and admitted the truth of several sentencing enhancements, including three “strike” priors, in exchange for a 16-year sentence. The trial court struck two strike priors and one prison prior for purposes of sentencing. The court imposed a total sentence of 16 years; four years (double the low term of two years) for burglary, plus five years each for two prior serious felony convictions and one year each for two prior prison terms. He received presentence custody credit for 588 actual days, plus 118 days conduct credit for a total of 706 days.

Tran filed a notice of appeal, but did not request or obtain a certificate of probable cause. His failure to obtain a certificate of probable cause precludes any challenge to the validity of the plea. Moreover, we conclude there are no arguably meritorious noncertificate issues to raise on appeal. Therefore, the judgment is affirmed.

I

FACTS

In August 2007, the Orange County District Attorney filed a felony complaint alleging Tran committed first degree burglary on August 7, 2007. The complaint further alleged Tran had three “strike” priors (§§ 667, subdivisions (b)-(i), 1170.12), two prior serious felony convictions (§ 667, subd. (a)(1)), and served two prior prison terms (§ 667.5, subd. (b)). A first amended complaint added a third prior prison term allegation. The court provided Tran with a Vietnamese interpreter at the arraignment on September 18, 2007, and during two prior court appearances. However, on January 18, 2008, Tran, who appeared in pro per, waived time for the preliminary hearing without the assistance of an interpreter.

The preliminary examination began on February 27, 2008. Tran’s attorney stipulated to the use of a noncertified interpreter. During the course of the hearing,

¹ All further statutory references are to the Penal Code.

counsel told the court that Tran spoke some English and that they had communicated in English on occasion “just for immediacy.” Fountain Valley Police Officer Jesse Hughes testified that on August 7, 2007, at approximately 5:30 p.m. he was dispatched to a particular residence in Fountain Valley in reference to a residential burglary. A resident of the home told Hughes that sometime between 7:30 a.m. and when she returned home from work at 5:30 p.m., someone had broken a living room window and gained entry into the home she shared with her husband. She noticed that some of her jewelry was missing and that other items in the house appeared out of place. Her husband said the thief had taken three digital cameras and a watch. Neither resident of the home had given permission to anyone else to come into their home.

The residents had previously installed a video surveillance system in the home. The system had four cameras, which showed different locations outside the house, and it ran 24 hours a day. The officer reviewed the surveillance footage from the day of the theft. He saw a heavy set Asian male in his late 20’s to early 30’s walk into the backyard of the residence at around 2:10 p.m., and he saw this man attempt to open a sliding glass window. When the sliding door would not open, the man retrieved some type of tool and attempted to pry open the door. When that didn’t work, he retrieved a different tool and shattered the glass. Once the glass was broken, the man was able to reach through door, unlock it, and remove a wooden dowel at the base of the door. The man slid open the door and walked inside the house. Later, the officer saw the same person exit the house through the sliding glass window, walk to the front of the house, and get into an orange car. The officer identified Tran as the young Asian male on the video.

The District Attorney filed an information alleging one count of first degree burglary, three “strike” priors, two prior serious felony convictions and the service of three prior prison terms on March 12, 2008. With the assistance of a Vietnamese interpreter, Tran was advised of his rights and waived statutory time for a jury trial. On

August 8, Tran waived time without the benefit of an interpreter. On October 17, Tran again waived time, but with an interpreter present.² By the time of his next court appearance, Tran had retained counsel, Jack Early, and the clerk's transcript states "Spanish interpreter no longer required for this case." The reporter's transcript for this date does not mention the presence of an interpreter of any kind, nor does the clerk's transcript for the next three court appearances.

On April 21, 2009, Tran, represented by Mr. Early, entered into a plea bargain with the court. The factual basis for the plea is as follows: "[O]n 8/7/07, I unlawfully entered an inhabited dwelling house with the intent to commit larceny." He filed a pro per notice of appeal on June 17, 2009. Tran checked a box on the form notice that indicates he sought to appeal "based on the sentence or other matters occurring after the plea." On another form, Tran suggested as a possible appellate issue, "I do not agree with my credits and the amount of time given due to my prison prior!"

II

DISCUSSION

We appointed counsel on appeal. Counsel filed a brief setting forth the facts and procedural history of the case with citations to the record. However, counsel presents no argument for reversal. Instead, counsel requests this court review the record for error as mandated by *People v. Wende* (1979) 25 Cal.3d 436. Pursuant to *Anders v. California* (1967) 386 U.S. 738, counsel refers to three possible, but not arguable issues:

(1) Is appellant's guilty plea constitutionally valid and can the validity of the plea be challenged on direct appeal? Because appellant did not request or obtain a certificate of probable cause, he may not challenge the validity of his plea by direct appeal. (§ 1237.5; *People v. Cuevas* (2008) 44 Cal.4th 374, 379; *People v. Shelton* (2006) 37 Cal.4th 759, 766; *People v. Buttram* (2003) 30 Cal.4th 773, 781-782; *People v.*

² The clerk's transcript states, "Vi Nguyen, Spanish Interpreter, present to interpret for the defendant."

Panizzon (1996) 13 Cal.4th 68, 74-76.) Furthermore, the record reflects the court adequately explained appellant's constitutional rights, accepted appellant's waiver of those rights, and made a finding that Tran knowingly and voluntarily waived his constitutional rights.

(2) Did the trial court sentence appellant in accordance with the plea agreement and has any violation been preserved for review? Tran's attorney first wrote a sentencing range of 3, 4, or 5 years for first degree burglary, but the court caught the error and ultimately imposed the 16-year term promised to Tran. Thus, the term imposed complies with the terms and conditions of Tran's guilty plea. Because there is no violation of the agreement, appellant had no right to withdraw the plea. (*People v. Walker* (1991) 54 Cal.3d 1013, 1024.)

(3) Was appellant erroneously deprived of his right to an interpreter during the plea proceedings; did any violation affect the validity of the plea; can any issues related to the lack of interpreter be raised without a certificate of probable cause? A guilty plea conclusively admits the truth of the charged offense or allegation. (*In re Chavez* (2003) 30 Cal.4th 643, 656.) Further, as noted above, any challenge to the validity of the plea brings an appeal within the ambit of section 1237.5, and Tran failed to request or obtain a certificate of probable cause.

We granted Tran permission to file a brief on his own behalf. He has not responded. A review of the record pursuant to *People v. Wende, supra*, 25 Cal.3d 436 and *Anders v. California, supra*, 386 U.S. 738, including the possible issues referred to by appellate counsel, has disclosed no reasonably arguable appellate issue. Competent counsel has represented appellant on this appeal.

III
DISPOSITION

The judgment is affirmed

SILLS, P. J.

WE CONCUR:

BEDSWORTH, J.

ARONSON, J.